IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3234 OF 1990

Motiram Tukaram Patil)
Indian Inhabitant of Raigad,)
residing at Mulekhand Pada,)
Tal. Post Uran, Dist. Raigad.) .. Petitioner

V/s

City and Industrial Development)
Corporation of Maharashtra Limited)
a Government of Maharashtra Undertaking,)
duly incorporated under the provisions)
of the Companies Act, 1956 having its)
registered office at "Nirmal",)
2nd Floor, Nariman Point,)
Mumbai-400 021.) .. Respondent

WITH

WRIT PETITION NOS.687/95, 688/95, 3235/90, 3244/90, 3246/90, 3557/90, 3559/90 AND 4263/90

Mr.A.V. Bukhari, Senior Advocate for the petitioners.

Mr.G.S. Hegde for the respondent.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 22ND AUGUST 2007

ORAL JUDGMENT: (Per D.G. Karnik, J)

1. Since common questions of law arise in all these writ petitions, they are being disposed of by this common judgment.

2. By this petition, the petitioners seek a direction from this Court that the action of the respondent in not removing the stagnation of the petitioners and not giving them annual increments from the year 1984 onwards be struck down. The petitioners further seek a direction that they be given proper placement in seniority/gradation in the list of clerk-cum-typists.

3. Each of the petitioners was appointed by separate orders of appointment as Assistant Welder/ Instructor by the respondent in its Technical Training Centre. Their appointments were made somewhere between the years 1973-74. As the respondent decided to close the Technical Training Centre wherein the petitioners were appointed, the petitioners were given three options, namely (i) the petitioners could opt to go in service of the Government of Maharashtra, (ii) the petitioners could be reappointed in the respondent or its subsidiary CIDCO Transport Corporation where they would be issued reappointment orders in the equivalent post, and if such equivalent post was not available then the petitioners would be appointed to a post carrying lower payscale subject to the condition that the petitioners' existing pay would be protected in that

scale but the petitioners would stand junior to all existing employees in the cadre in which they would be appointed, and (iii) if the petitioners chose neither of the two options, they would be retrenched and paid retrenchment compensation in accordance with law.

4. By a letter dated 17th June 1980, each of the petitioners exercised the option of seeking re-appointment under the respondent to an equivalent post. Accordingly, the petitioners were appointed by the respondent as Junior Clerk-cum-Typist with protection of their existing pay. The petitioners were thereafter also given regular increments in the scale of Junior Clerk-cum-Typist till they reached the maximum of their payscale. On reaching the maximum payscale, further increments were stopped. The petitioners have thereafter approached this Court for directions as stated above.

5. Learned counsel for the petitioners brought to our notice the subsequent development which happened in the year 1995. On 21st July 1995, the Board of Directors of the respondent passed Resolution No.6715 wherein it was resolved that the Time Bound Promotion Policy Scheme as implemented by the Government in respect of its own employees should also be made

applicable to the employees of the respondent and the Managing Director of CIDCO was authorised to approach the Government for obtaining its sanction for making the said Scheme applicable. Learned counsel then submitted that the Scheme has been sanctioned by the Government and made applicable to the the Petitioners who are granted benefit of the said Scheme. The petitioners who had reached maximum of their payscale but did not get promotion by reason of there being no opportunity of promotion have accordingly been granted a payscale on the next higher grade. The respondent was however directed to file an affidavit in reply by adjourning the matter. Accordingly, the respondent has filed an affidavit sworn by Shankar Shivram Naik on 2nd August 2007, wherein it is stated that the resolution dated 8th June 1995 whereby higher payscale is allowed has been implemented and the petitioners have all been given the benefit thereof with effect from 1st October 1994. Thus the main grievance of the petitioners, which is made in the petition, that they have been denied the benefit of promotion as well as non-removal of the stagnation in case the promotional avenues are not available is redressed. By an order dated 25th June 2004 passed in Writ Petition No.688 of 1995 (along with others), other similar petitions filed by other similar employees of the respondent on similar grounds have been dismissed on

the ground that the grievance of the employees that they were not granted stagnation benefits has been redressed by the aforesaid decision of the respondent.

6. Faced with this situation that the grievance of the petitioners made in their petitions has been redressed, the petitioners shifted their stand and the counsel for the petitioners submitted that the date on which the petitioners were absorbed in the respondent as Junior Clerk-cum-Typist, they had no option but to agree to the terms of the contract that they would be absorbed in any post carrying equal payscale or if such post is not available to a lower payscale with protection of their existing payscale but the petitioners would be junior to others already in the employment of the respondent in that grade. Counsel submitted that this was unconscionable and unreasonable condition which was required to be struck down. In support of his submission, counsel relied upon a decision of the Apex Court in **Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguli, reported in 1986 (2) C.L.R. 322**. Inviting our attention to paragraph 96 of the said decision, counsel submitted that the petitioners had no option of making any choice because if they had not accepted the option of joining service of the respondent as juniors in the grade, all that they would have got is

the compensation under the Industrial Disputes Act and lost their jobs forever. He submitted that the term of the option that the petitioners would be absorbed in an equivalent post and if such post is not available in any post carrying lower payscale with protection of the existing payscale, but as junior to the persons already employed with the respondent in that grade was unscientific and the petitioners had no choice but to accept the said term. In the present case, the petitioners were given three options, namely absorption in government service or to accept the service under the respondent corporation or if they chose neither of the two options they would be paid terminal benefits as per the Industrial Disputes Act. Thus, possibility of termination of employment was not a fait accompli as was the case in the case of Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguli (supra). The petitioners had an option to get absorbed in the government service also. Therefore, the said case is clearly distinguishable on facts. The petitioners with their eyes open and perhaps because the benefits under the conditions of service under the respondent corporation were more favourable than the service under the government accepted the offer of service under the respondent instead of accepting the option of joining the government service. The petitioners having accepted

the said option of joining the services of the respondent in preference to the government service cannot now complain that the terms of offer were unscientific, unreasonable and unconscionable. In any event, we also do not find any pleading of the offer being unconscionable in the petition. In fact, the original petition, as stated earlier, was only filed for grant of stagnation benefit. Since the stagnation benefit has already been granted to the petitioners, that grievance is redressed. The petitioners were treated equally with all other employees of the respondent except that they were appointed as juniors to the persons already in employment of the respondent in that grade on the date of their absorption. Thereafter there has been no discrimination between the petitioners and others.

7. In the circumstances, there is no merit in the petitions which are hereby dismissed. Rule discharged with no order as to costs.

(D.G. KARNIK, J.) (S.B. MHASE, J.)